



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

December 10, 1990

Mr. Ricardo J. Navarro
Assistant Criminal District
Attorney - Chief, Civil Section
300 Dolorosa, Suite 4049
San Antonio, Texas 78205-3030

OR90-574

Dear Mr. Navarro:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 10016.

You have received a request under the Open Records Act for copies of the delinquent tax roll for the Northwest Independent School District [hereinafter NEISD]. You claim that the information requested is excepted by section 3(a)(3) of the Open Records Act, which excepts:

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

In order that a custodian may claim section 3(a)(3), the governmental body must show: (1) that litigation is actually pending or reasonably anticipated, and (2) that the information in question "relates" to the litigation. Open Records Decision Nos. 551 (1990); 416 (1984).

You inform us that, pursuant to subsection (c) of section 6.22 of the Tax Code, NEISD requires the Bexar County Tax Assessor-Collector to collect current taxes. Pursuant to section 6.30 of the Tax Code, NEISD has entered into a delinquent tax contract with another attorney in San Antonio. However, the county commissioners court construes subsection (c) of section 6.22 of the code to confer authority on it to require NEISD to utilize the same attorney to enforce the collection of delinquent taxes that the county uses.

You submitted to this office a request for an attorney general's opinion, which was designated RQ-2010, regarding the proper construction of section 6.22 of the code. However, NEISD filed suit in state district court in Bexar County seeking, inter alia, the court's construction of the Tax Code section at issue. Because of the long-standing practice of this office of declining to answer opinion requests on matters that are in litigation, we closed your opinion request file. We understand you to assert that the delinquent tax roll is excepted from disclosure by section 3(a)(3) because the roll "relates" to litigation. We disagree.

The matters in dispute in the litigation relate, not to the delinquent tax roll, but rather to the legal authority of the school district to enter into a delinquent tax contract with a private attorney, pursuant to section 6.30 of the code, in an instance in which the district has required a county tax assessor-collector, pursuant to subsection (c) of section 6.22 of the code, to collect its current taxes. Regardless of whether the attorney with whom the district has entered into such a contract receives access to the delinquent tax roll, his mere access to such information is in no way relevant to the disposition of the legal matters in dispute in court.

We have considered the exception you claimed, specifically section 3(a)(3), and have reviewed the documents at issue. A previous determination of this office, Open Records Decision No. 551 (1990), a copy of which is enclosed, resolves your request. For this reason, you must release the requested information.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR90-574.

Yours very truly,



Jim Moellinger
Assistant Attorney General
Opinion Committee

JM/le

Ref.: ID# 10016, 10159

Enclosure: Open Records Decision No. 551 (1990)

cc: John R. Heard

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